IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1835 OF 2007

V.M. Salgaocar & Bros. Pvt. Ltd. ..Petitioners

Vs.

Mackinnon Mackenzie and Co. Ltd. ..Respondent

Mr. A.M. Vernekar for petitioners.

Mr. N.J. Ratnani i/by M/s. Ashwin Ankhad & Associates for respondents.

CORAM: B.H. MARLAPALLE, J.

Date : March 16, 2007.

P.C.:

1. Head. Rule. The respondent waives service. Rule is taken up for final hearing forthwith as this petition could be disposed off at the admission stage itself.

2. T.E. & R. Suit No.82/97 of 2005 was filed on or about 8/6/2005 before the Small Causes Court at Bombay by the present respondent and the

petitioner-defendant served with the notice only on 26/8/2005 as recorded in the roznama of the Small Causes Court dated 23/9/2005. On 23/9/2005 the defendant caused his appearance through an Advocate. Consequently, the defendant was required to file his Written Statement within 90 days on the outer limit which would expire in the instant case on or about 25/11/2005. However, the defendant's Advocate filed an application seeking time to file W.S. for the first time on 2/2/2006 and the same was rejected on 24/2/2006. The learned Judge further passed an order directing the suit to proceed without W.S. and the plaintiff to prove his claim. On the same day, the defendant filed an application at Exh.12 for setting aside the No W.S. order. On 13/3/2006 when this application was listed for arguments, the defendant claimed that his W.S. was ready and verified. However, the application at Exh.12 was not heard and decided and finally it was rejected by the impugned order dated 24/1/2007.

3. Though it is true that the defenant failed to file its W.S. within the stipulated period, the W.S.

copy placed before me shows that it was verified before the Superintendent of the Small Causes Court on 13/3/0026, which clearly indicates that W.S. was in fact ready to be submitted before the Small Causes Court on that day when the application at Exh.12 was still pending. The said application was adjourned from time to time by the Court and having regard to the view taken by this court as well as the Supreme Court on the time limit to file W.S., the approach adopted by the trial court would not serve the interest of justice. Nevertheless, the defendant will have to be also put to costs.

4. Hence, the petition is allowed and the impugned order is hereby quashed and set aside, provided that the defendant appears and files the W.S. before the Small Causes Court on 23/3/2007 and remits an amount of Rs.10,000/- by way of costs. The trial court will list the matter on 23/3/2007 and take the W.S. on record, provided the amount of Rs.10,000/- is deposited in the said court. The plaintiff will be at liberty to withdraw the said amount. In the alternative the defendant is at liberty to pay the

amount to the plaintiff and obtain a receipt and produce the same on 23/3/2007 before the Small Causes Court. Rule made absolute accordingly.

5. Writ to go to the trial court forthwith. In addition, an authenticated copy of this order be made available to the parties.

(B.H. Marlapalle,J.)